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Wilson Sonsini Goodrich &amp; Rosati

PROFESSIONAL CORPORATION

September 10, 2003

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**VIA FACSIMILE AND OVERNIGHT MAIL**

Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Dr.  
Capitol Heights, Maryland 20743

**Re: Request for Review of the Decision of the Universal Service Administrator,  
CC Docket No. 02-6**

Dear Counsel:

Enclosed please find Inter-Tel Technologies Inc.'s Request for Review of the Decision of the Universal Service Administrator Denying Appeal by Inter-Tel, Inc.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

  
Stephen H. Wong

cc: Universal Service Administrative Company,  
Schools and Libraries Division  
Box 125 - Correspondence Unit  
80 South Jefferson Road  
Whippany, New Jersey 07981

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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SEP 10 2003  
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In the Matter of )

Request for Review of the Decisions of the )  
Universal Service Administrator by )  
Intel-Tel, Inc. )

CC Docket No. 02-6

**REQUEST FOR REVIEW OF THE DECISION OF THE  
UNIVERSAL SERVICE ADMINISTRATOR DENYING APPEAL BY  
INTER-TEL, INC.**

Stephen H. Wong  
Wilson Sonsini Goodrich & Rosati, P.C.  
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Counsel for Inter-Tel Technologies Inc.

September 9, 2003

**Administrator's Decision on Appeal: Funding Year 2001-2003 Dated July 16, 2003**

Billed Entity Number: 158862  
471 Application Number: 256403  
Funding Request Number(s) 641657, 641908, 642460

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**TABLE OF ATTACHMENTS**

<b>Exhibit</b>	<b>Description of Attachments</b>
1	Printout of download from USAC's Funding Request Data Retrieval Tool
2	Commitment Adjustment Letter from USAC to ALAC dated January 31, 2003
3	Letters from John Gardner to the SLD regarding appeal of Commitment Adjustment Letters for FRNs 641908, 641657, and 642460
4	SLD Decision Letter dated July 16, 2003
5	ALAC's FCC Appeal dated June 20, 2003
6	Statement of Facts by Frances B. Older and James Carter dated March 20, 2003
7	SLD instructions for FCC Form 470

### **Introduction**

The Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") denied Inter-Tel's appeal of SLD's Year 2001 Funding Commitment Adjustments for the Funding Request Numbers ("FRN"s) and application number listed above. Pursuant to 47 C.F.R. § 54.719 Inter-Tel Technologies Inc. ("Inter-Tel") hereby appeals that decision. The SLD found a competitive bidding violation based on: (1) a mistaken belief that independent E-rate consultant Frances B. Older ("Fran Older") was formerly associated with both the E-Rate Applicant, Approach Learning Assessment Centers ("ALAC") and with LW Associates, an E-Rate service provider; and (2) a misreading of FCC precedent to require that the SLD find that *all* service providers associated with an applicant have committed a competitive bidding violation whenever any *one* of those service providers has an improper relationship with the applicant. Either one of these errors requires reversal of USAC's decision denying Inter-Tel's appeal. This appeal is reviewed *de novo*. 47 C.F.R. § 54.723.

### **Statement of the Issues**

1. Whether the administrator correctly determined that consultant Fran Older is associated with the service provider LW Associates.
2. Whether the Administrator correctly construed the Commission's decision in *MasterMind Internet Services, Inc.* to find every service provider on an applicant's form 471 violates the competitive bidding process whenever any one service provider is associated with an applicant's contact person.

### **Factual Background**

Inter-Tel was one of three service providers working on the Approach Learning Assessment Center's ("ALAC") year 2001 E-Rate projects. According to information available on the SLD web-site, the other service providers were Pacific Bell and LW Associates. See Exh. 1 (Printout of download from USAC's Funding Request Data Retrieval Tool,

<http://www.sl.universalservice.org/funding/opendatasearch/Search1.asp> downloaded on Aug. 27, 2003). Inter-Tel has no affiliation with LW Associates.

In Commitment Adjustment Letters dated January 31, 2003, the SLD denied funding for the above-referenced FRNs, finding a competitive bidding violation based upon a perceived association between Fran Older and LW Associates. *See* Exh. 2 (Commitment Adjustment Letter from USAC to ALAC dated January 31, 2003). These adjustments seek to recover \$120,531.83 from Inter-Tel (\$84,889.24 from FRN 641657; \$21,186.00 from FRN 641908; and \$14,450.59 from FRN 642460). Inter-Tel timely appealed these commitment adjustments on March 28, 2003. *See* Exh. 3 (letters from John Gardner to the SLD regarding appeal of Commitment Adjustment Letters for FRNs 641908, 641657, and 642460). The SLD denied these appeals. *See* Exh. 4 (SLD Decision Letter dated July 16, 2003).

ALAC had hired Fran Older, an independent E-Rate consultant, to help it apply for E-Rate funding. Based on correspondence submitted with ALAC's FCC Appeal, LW Associates appears to have filled out its FCC Form 473 in 1998 listing Fran Older as LW Associates' contact person under the mistaken assumption that correspondence and questions on Form 473 should be directed to the applicant's contact person, not the service provider's. *See* Exh. 5 (Approach Learning and Assessment Centers' FCC Appeal of SLD Denial of Appeal, CC Docket Nos. 96-45 and 97-21, (Jun. 20, 2003)). Based on two Statements of Fact filed by ALAC with the SLD, Inter-Tel has no reason to doubt that Fran Older is not now, and never has been, a consultant to LW Associates. *See* Exh. 6 (Statement of Facts by Frances B. Older and James Carter). In so far as the SLD relies on the similarity of Fran Older's address to LW Associates' address, these statements explain that Fran Older set up a mailbox at LW Associates' offices at 5319 University Drive, Irvine, CA, for the sole purpose of expediting receipt of time sensitive E-

rate correspondence. *See id.* Fran Older never kept an office on the premises of LW Associates. *See id.*

In its initial appeal filed with USAC, Inter-Tel made plain that Fran Older is not an Inter-Tel employee. *See* Exh. 3. In denying Inter-Tel's appeal USAC never claims Inter-Tel has any association whatsoever with Fran Older. *See* Exh. 4.

### Discussion

When it denied Inter-Tel's appeal, USAC misunderstood the facts and misread Commission precedent. USAC stated that it denied Inter-Tel's appeal because: (i) it believed Fran Older was associated with LW Associates while she was a contact person for ALAC; and (ii) it construed the FCC's decision in *In re Mastermind Internet Services, Inc.*, CC Docket 96-45, No. FCC 00-167 (May 23, 2000) (2000 WL 664884), to require finding a violation of E-Rate program rules as to every service provider working for ALAC including Inter-Tel, even though Inter-Tel does not employ Fran Older and is not affiliated with LW Associates.

The two Statements of Fact filed with the Commission as part of ALAC's appeal indicate Fran Older is not associated with LW Associates. In support of its finding that Fran Older is associated with LW Associates, the SLD cites only its earlier validation of Fran Older as the contact person for LW Associates. The SLD does not reveal the source of this validation. Assuming the SLD's validation is based on LW Associates' 1998 form 473, the SLD's reliance on this form ignores both Fran Older and LW Associates' statements that LW Associates erred when it filled out this form and that Fran Older was never, in fact, associated with LW Associates.

*In re Mastermind* found a violation of the Commission's competitive bidding requirements where MasterMind Internet Services Inc. ("Mastermind") participated in the



bidding process while one of its employees was listed as the applicants' contact person. CC Docket 96-45 at ¶ 9. If, in fact, Fran Older was never associated with LW Associates, no *MasterMind* violation occurred.

Moreover, even if Fran Older was improperly associated with LW Associates, neither *Mastermind* nor any of its progeny hold Inter-Tel liable for LW Associates' violation.<sup>1</sup> Citing only *Mastermind*, the SLD concludes that a competitive bidding violation by an applicant and one service provider taints every service provider working for that applicant. See Exh. 4.

*Mastermind* does not so hold. On its face the decision applies only to the service provider maintaining the improper relationship with the applicant. Nowhere does it purport to disqualify every service provider bidding on a project.

On the contrary, the decision implicitly affirms that other service providers are *not* affected by one service provider's violation. *Mastermind* concerned a situation where multiple service providers bid on many Form 470s. *Id.* at ¶ 1n.3 & Appendix A. *Mastermind* argued that, notwithstanding its participation, the bidding processes were open and fair, citing several instances in which its bids were not accepted in support of this claim. *Id.* at ¶11. Significantly, while rejecting *MasterMind*'s claims that the acceptance of other service providers' bids shows the bidding process was open and fair, the decision does not withdraw funding from those bids — even though *MasterMind* conceded it was involved in writing the Form 470s. *Id.* at ¶¶ 6,11. Since those other bidders did not have an improper relationship with the applicants, merely bidding on a Form 470 written by some other service provider's employee did not constitute a competitive bidding violation in *Mastermind*. In contrast, the SLD's rejection of Inter-Tel's

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<sup>1</sup> Every FCC decision applying *Mastermind* considers a context where the service provider that was denied funding itself had an improper relationship with the applicant. See e.g. *A.R. Carethers SDA School*, CC Docket 96-45, 16 F.C.C.R. 6943 (Mar. 26, 2001) available at 2001 WL 286467; *In re College Prep School*, CC Docket 96-45 17

appeal turns *Mastermind* upside-down, penalizing the very competitor that, under *Mastermind*, suffers from LW Associate's alleged improper relationship with ALAC.

The SLD's own instructions on filling out FCC Form 470 are ambiguous. These instructions state: "If a service provider is involved in preparing the Form 470 and that service provider appears on the associated Form 471, this will taint the competitive bidding process and lead to denial of funding requests that rely on that Form 470." See Exh. 7 (SLD instructions for FCC Form 470 available at: <http://www.sl.universalservice.org/applicants/form470.asp>). Read in light of the facts of the *Mastermind* decision, this instruction could properly be read to disqualify funding requests only from "that service provider" "involved in preparing the Form 470." However, as applied in this case, the SLD interprets this instruction to disqualify every service provider relying on the 470 — even those who were not involved in preparing the Form 470 and who had no way of knowing the Form 470 was "tainted."

As applied by the SLD in this case, the Form 470 instruction signals a significant policy shift from the holding of *Mastermind*. Under the SLD's interpretation, service providers who did absolutely nothing wrong are deprived of payment for goods and services honestly provided. That result is patently unfair and amounts to an unconstitutional deprivation of the honest service provider's property.

With this rule, the SLD also violates its mandate to enforce the Commission's rules without creating rules on its own. The Commission has emphasized that USAC and the SLD in particular can only perform administrative functions and not make policy, interpret unclear provisions of the statutes or rules, or interpret the intent of congress. See *Changes to the Board of Directors of the National Exchange Carriers Associations, Inc.*, 13 FCC Rcd. 25058 (Nov. 20,

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F.C.C.R. 1738 (Jan. 30, 2002) available at 2002 WL 113466; *In re Escuelas Y Bibliotecas De Puerto Rico*, CC Docket 96-45, 17 F.C.C.R. 13624 (July 15, 2002) available at 2002 WL 141712.

1998) *available* at 1998 WL 804687. Indeed, the SLD is expressly “prohibited from making decisions of law or policy” and must limit its activities to “implementing existing rules and policies established by the Commission.” *Id.* The SLD’s extension of *Mastermind* has no precedent in Commission rules or orders and therefore cannot serve as a basis for a violation of Commission competitive bidding rules.<sup>2</sup>

### Conclusion

For the foregoing reasons, Inter-Tel respectfully requests the Commission reverse USAC’s decision to uphold the SLD’s decision affirming Year 2001 Funding Commitment Adjustment’s for the following FRN’s: 641567; 641908; 642460.

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation



Stephen H. Wong  
Counsel for Inter-Tel Technologies, Inc.

---

<sup>2</sup> Inter-Tel also joins ALAC’s argument that even if Fran Older was formally associated with both ALAC and LW Associates, no *Mastermind* violation occurred because Fran Older did not actually control the bidding process. *See* Exh. 5.

# Exhibit 1

471 Application Number	FRN	470 Application Number	Applicant Name	BEN	SPN	Service Provider Legal Name
256403	641657	9.2854E+14	ALAC	158862	143022581	Inter-Tel Technologies, Inc.
256403	641908	9.2854E+14	ALAC	158862	143022581	Inter-Tel Technologies, Inc.
256403	642283	9.2854E+14	ALAC	158862	143002665	Pacific Bell
256403	642460	9.2854E+14	ALAC	158862	143008103	Inter-Tel NetSolutions, Inc.
256403	642595	9.2854E+14	ALAC	158862	143009275	LW Associates
256403	642726	9.2854E+14	ALAC	158862	143009275	LW Associates
256403	642913	9.2854E+14	ALAC	158862	143009275	LW Associates
256403	643113	9.2854E+14	ALAC	158862	143009275	LW Associates
256403	643336	9.2854E+14	ALAC	158862	143009275	LW Associates

## **Exhibit 2**



Universal Service Administrative Company  
Schools & Libraries Division

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COMMITMENT ADJUSTMENT LETTER

January 31, 2003

Fran Older  
APPROACH LEARNING & ASSESSMENT CENTE  
5319 University Drive, Box 416  
Irvine, CA 92612 2965

Re: COMMITMENT ADJUSTMENT  
Funding Year: 2001-2002  
Form 471 Application Number: 256403

Dear Applicant:

Our routine reviews of Schools and Libraries Program funding commitments revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, SLD must now adjust your overall funding commitments. The purpose of this letter is to make the adjustments to your funding commitments required by program rules.

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the FRNs from your application for which adjustments are necessary. The SLD is also sending this information to your service provider(s), so preparations can be made to implement this decision. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. The amount is shown as Funds to be Recovered. If funds must be recovered, we will be sending your service provider a letter describing the process for recovering these funds in the near future, and we will send a copy of the letter to you. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount.

## TO APPEAL THESE FUNDING COMMITMENT DECISIONS

If you wish to appeal the Funding Commitment Decision(s) indicated in this letter, your appeal must be made in writing and **RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE DATE AT THE TOP OF THIS LETTER.** Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Commitment Adjustment Letter you are appealing. Your letter of appeal must include the applicant name and the Form 471 Application Number from the top of this Commitment Adjustment Letter.
3. Identify the particular Funding Request Number(s) (FRN) that is the subject of your appeal. When explaining your appeal, include the precise language or text from the Commitment Adjustment Letter that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, you will enable us to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125- Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site [www.sl.universalservice.org](http://www.sl.universalservice.org) or by calling the Client Service Bureau at 1-(888)-203-8100. We encourage the use of either the e-mail or fax filing options to expedite filing your appeal.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket Nos. 96-45 and 97-21 on the first page of your appeal to the FCC. Your appeal must be **RECEIVED BY THE FCC WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER.** Failure to meet this requirement will result in automatic dismissal of your appeal. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, [www.sl.universalservice.org](http://www.sl.universalservice.org) or by calling the Client Service Bureau at 1-(888)-203-8100. We strongly recommend that you use either the e-mail or fax filing options because of continued substantial delays in mail delivery to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.



### A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each funding request from your application for which a commitment adjustment is required. We are providing the following definitions.

- **FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each request in Block 5 of your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.
- **SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs.
- **SERVICE PROVIDER:** The legal name of the service provider.
- **CONTRACT NUMBER:** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.
- **SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.
- **SITE IDENTIFIER:** The Entity Number listed in Form 471 for "site specific" FRNs.
- **BILLING ACCOUNT NUMBER:** The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.
- **ADJUSTED FUNDING COMMITMENT:** This represents the adjusted total amount of funding that SLD has committed to this FRN. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.
- **FUNDS DISBURSED TO DATE:** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- **FUNDS TO BE RECOVERED:** This represents the amount of Funds Disbursed to Date that exceed the Adjusted Funding Commitment amount. These funds will have to be recovered. If the Funds Disbursed to Date do not exceed the Adjusted Funding Commitment amount, this entry will be \$0.
- **FUNDING COMMITMENT ADJUSTMENT EXPLANATION:** This entry provides a description of the reason the adjustment was made.

**Funding Commitment Report for Application Number: 256403**

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**Funding Request Number:** 641657 **SPIN:** 143022581**Service Provider:** Inter-Tel Technologies, Inc.**Contract Number:** LAN404322**Services Ordered:** INTERNAL CONNECTIONS**Site Identifier:****Billing Account Number:** 714-543-5437**Adjusted Funding Commitment:** \$0.00**Funds Disbursed to Date:** \$84,889.24**Funds to be Recovered:** \$84,889.24**Funding Commitment Adjustment Explanation:**

After thorough investigation it has been determined that Fran Older is associated with LW Associates (5319 University Drive, Irvine CA 92612, SPIN: 143009275), a service provider. Fran Older is also the contact person on the Form 470 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation, the SLD is rescinding the amount committed to this funding request in full, and will seek recovery of any funds that have been disbursed.

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**Funding Request Number:** 641908 **SPIN:** 143022581**Service Provider:** Inter-Tel Technologies, Inc.**Contract Number:** LAN404323**Services Ordered:** INTERNAL CONNECTIONS**Site Identifier:****Billing Account Number:** 714-543-5437**Adjusted Funding Commitment:** \$0.00**Funds Disbursed to Date:** \$21,186.00**Funds to be Recovered:** \$21,186.00**Funding Commitment Adjustment Explanation:**

After thorough investigation it has been determined that Fran Older is associated with LW Associates (5319 University Drive, Irvine CA 92612, SPIN: 143009275), a service provider. Fran Older is also the contact person on the Form 470 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation, the SLD is rescinding the amount committed to this funding request in full, and will seek recovery of any funds that have been disbursed.

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Funding Request Number: 642283 SPIN: 143002665

Service Provider: Pacific Bell

Contract Number: LAN404324

Services Ordered: TELCOMM SERVICES

Site Identifier:

Billing Account Number: 714-543-5437

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$3,728.40

Funds to be Recovered: \$3,728.40

Funding Commitment Adjustment Explanation:

After thorough investigation it has been determined that Fran Older is associated with LW Associates (5319 University Drive, Irvine CA 92612, SPIN: 143009275), a service provider. Fran Older is also the contact person on the Form 470 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation, the SLD is rescinding the amount committed to this funding request in full, and will seek recovery of any funds that have been disbursed.

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Funding Request Number: 642460 SPIN: 143008103

Service Provider: Inter-Tel NetSolutions, Inc.

Contract Number: LAN404325

Services Ordered: TELCOMM SERVICES

Site Identifier:

Billing Account Number: 714-543-5437

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$14,456.59

Funds to be Recovered: \$14,456.59

Funding Commitment Adjustment Explanation:

After thorough investigation it has been determined that Fran Older is associated with LW Associates (5319 University Drive, Irvine CA 92612, SPIN: 143009275), a service provider. Fran Older is also the contact person on the Form 470 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation, the SLD is rescinding the amount committed to this funding request in full, and will seek recovery of any funds that have been disbursed.

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Funding Request Number: 642595 SPIN: 143009275

Service Provider: LW Associates

Contract Number: LWA008127

Services Ordered: INTERNET ACCESS

Site Identifier:

Billing Account Number: 714-543-5437

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$6,173.10

Funds to be Recovered: \$6,173.10

Funding Commitment Adjustment Explanation:

After thorough investigation it has been determined that Fran Older is associated with LW Associates (5319 University Drive, Irvine CA 92612, SPIN: 143009275), a service provider. Fran Older is also the contact person on the Form 470 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation, the SLD is rescinding the amount committed to this funding request in full, and will seek recovery of any funds that have been disbursed.

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Funding Request Number: 642726 SPIN: 143009275

Service Provider: LW Associates

Contract Number: LWA008127-2

Services Ordered: INTERNET ACCESS

Site Identifier:

Billing Account Number: 714-543-5437

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$98,242.20

Funds to be Recovered: \$98,242.20

Funding Commitment Adjustment Explanation:

After thorough investigation it has been determined that Fran Older is associated with LW Associates (5319 University Drive, Irvine CA 92612, SPIN: 143009275), a service provider. Fran Older is also the contact person on the Form 470 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation, the SLD is rescinding the amount committed to this funding request in full, and will seek recovery of any funds that have been disbursed.

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Funding Request Number: 642913 SPIN: 143009275

Service Provider: LW Associates

Contract Number: LWA987125

Services Ordered: INTERNAL CONNECTIONS

Site Identifier:

Billing Account Number: 714-543-5437

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$85,615.20

Funds to be Recovered: \$85,615.20

Funding Commitment Adjustment Explanation:

After thorough investigation it has been determined that Fran Older is associated with LW Associates (5319 University Drive, Irvine CA 92612, SPIN: 143009275), a service provider. Fran Older is also the contact person on the Form 470 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation, the SLD is rescinding the amount committed to this funding request in full, and will seek recovery of any funds that have been disbursed.

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Funding Request Number: 643113 SPIN: 143009275

Service Provider: LW Associates

Contract Number: LWA017130

Services Ordered: INTERNAL CONNECTIONS

Site Identifier:

Billing Account Number: 714-543-5437

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$260,910.00

Funds to be Recovered: \$260,910.00

Funding Commitment Adjustment Explanation:

After thorough investigation it has been determined that Fran Older is associated with LW Associates (5319 University Drive, Irvine CA 92612, SPIN: 143009275), a service provider. Fran Older is also the contact person on the Form 470 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation, the SLD is rescinding the amount committed to this funding request in full, and will seek recovery of any funds that have been disbursed.

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Funding Request Number: 643336 SPIN: 143009275

Service Provider: LW Associates

Contract Number: LWA007127

Services Ordered: INTERNAL CONNECTIONS

Site Identifier:

Billing Account Number: 714-543-5437

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$112,795.20

Funds to be Recovered: \$112,795.20

Funding Commitment Adjustment Explanation:

After thorough investigation it has been determined that Fran Older is associated with LW Associates (5319 University Drive, Irvine CA 92612, SPIN: 143009275), a service provider. Fran Older is also the contact person on the Form 470 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation, the SLD is rescinding the amount committed to this funding request in full, and will seek recovery of any funds that have been disbursed.



**Universal Service Administrative Company**  
Schools & Libraries Division

Box 125 - Correspondence Unit  
80 South Jefferson Road  
Whippany, NJ 07981

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**COMMITMENT ADJUSTMENT LETTER**

January 31, 2003

Beth Gaucin  
Inter-Tel NetSolutions, Inc.  
1615 S. 52nd Street  
Tempe, AZ 85281 2965

**Re: COMMITMENT ADJUSTMENT**

Funding Year: 2001-2002

Form 471 Application Number: 256403

Applicant Name: APPROACH LEARNING & ASSES

Contact Person: Fran Older

Contact Phone: 949-786-1785

**Dear Service Provider Contact:**

Our routine reviews of Schools and Libraries Program funding commitments revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, SLD must now adjust these funding commitments. The purpose of this letter is to inform you of the adjustments to these funding commitments required by program rules.

**FUNDING COMMITMENT REPORT**

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the FRNs from the application for which adjustments are necessary. The SLD is also sending this information to applicant, so that you may work with them to implement this decision. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. The amount is shown as Funds to be Recovered. We expect to send you a letter describing the process for recovering these funds in the near future, and we will send a copy of the letter to the applicant. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount.

## TO APPEAL THESE FUNDING COMMITMENT DECISIONS

If you wish to appeal the Funding Commitment Decision(s) indicated in this letter, your appeal must be made in writing and **RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE DATE AT THE TOP OF THIS LETTER.** Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Commitment Adjustment Letter you are appealing. Your letter of appeal must include the applicant name and the Form 471 Application Number from the top of this Commitment Adjustment Letter.
3. Identify the particular Funding Request Number(s) (FRN) that is the subject of your appeal. When explaining your appeal, include the precise language or text from the Commitment Adjustment Letter that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, you will enable us to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125- Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site [www.sl.universalservice.org](http://www.sl.universalservice.org) or by calling the Client Service Bureau at 1-(888)-203-8100. We encourage the use of either the e-mail or fax filing options to expedite filing your appeal.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket Nos. 96-45 and 97-21 on the first page of your appeal to the FCC. Your appeal must be **RECEIVED BY THE FCC WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER.** Failure to meet this requirement will result in automatic dismissal of your appeal. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, [www.sl.universalservice.org](http://www.sl.universalservice.org) or by calling the Client Service Bureau at 1-(888)-203-8100. We strongly recommend that you use either the e-mail or fax filing options because of continued substantial delays in mail delivery to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.



## A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each funding request from your application for which a commitment adjustment is required. We are providing the following definitions.

- **FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each request in Block 5 of your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.
- **SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs.
- **SERVICE PROVIDER:** The legal name of the service provider.
- **CONTRACT NUMBER:** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.
- **SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.
- **SITE IDENTIFIER:** The Entity Number listed in Form 471 for "site specific" FRNs.
- **BILLING ACCOUNT NUMBER:** The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.
- **ADJUSTED FUNDING COMMITMENT:** This represents the adjusted total amount of funding that SLD has committed to this FRN. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.
- **FUNDS DISBURSED TO DATE:** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- **FUNDS TO BE RECOVERED:** This represents the amount of Funds Disbursed to Date that exceed the Adjusted Funding Commitment amount. These funds will have to be recovered. If the Funds Disbursed to Date do not exceed the Adjusted Funding Commitment amount, this entry will be \$0.
- **FUNDING COMMITMENT ADJUSTMENT EXPLANATION:** This entry provides a description of the reason the adjustment was made.